



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 24, 1939

Honorable Geo. E. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. G-264

**Re: Conflicting opinions covering
the application of the Chain
Store Tax Law to restaurants,
cafes and eating houses.**

By your letter of February 1, 1939, to this Department, you pointed out the apparent conflict in two outstanding opinions rendered by another administration concerning the taxability of restaurants, cafes and eating houses under House Bill No. 18, Chapter 400, Acts 44th Legislature, 1st Called Session, otherwise known as the Chain Store Tax Law.

Under date of January 4, 1936, Hubert T. Faulk, then Assistant Attorney General, advised you that restaurants, cafes and eating houses generally were subject to the license tax levied by the above cited Act. By letter opinion of date April 9, 1938, Wm. M. Brown, then Assistant Attorney General, directed to you an opinion from this Department holding expressly that restaurants, cafes and eating houses generally did not fall within the statutory definition of the term "store" or "mercantile establishment" embodied in Section 7 of the Chain Store Tax Law so as to be subject to the license tax levied on such stores.

We have carefully re-examined and considered these two conflicting opinions and the authorities, both statutory and judicial, supporting the reasoning of such opinions, as well as the recent decisions upon this question, and it is our conclusion therefrom that the opinion written by Mr. Wm. M. Brown and described above is the correct enunciation of the law upon this question. The opinion of Hubert T. Faulk of date January 4, 1936, insofar as in-

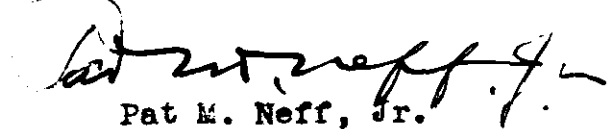
Hon. Geo. H. Sheppard, March 24, 1939, Page 2

consistent with the Brown opinion is overruled, and the latter opinion is in all things hereby confirmed.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By


Pat M. Neff, Jr.
Assistant

PMN:N

APPROVED


FIRST ASSISTANT ATTORNEY GENERAL

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